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Letter dated 24 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/903).

The Counter-Terrorism Committee has received the attached supplementary report (see annex) from Portugal, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 17 October 2002 from the Permanent Representative of Portugal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

At the request of my Government, I have the honour to transmit to you the second report to be submitted by Portugal to the Counter-Terrorism Committee pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

I should be grateful if you would arrange for the present letter and its enclosure to be circulated as a document of the Security Council.

(*Signed*) Gonçalo **Santa Clara Gomes**
Permanent Representative of Portugal to the United Nations

Enclosure

National report to the Security Council Counter-Terrorism Committee (supplementary clarifications)

Subparagraph 1 (a)

☐ The Portuguese Criminal Code (PCC) **does not include an express definition of terrorist act**, although such definition is implied in the definitions of terrorist group/organisation (Article 300, paragraph (2)) and terrorism (Article 300, paragraph (1)).

Thus, a terrorist organisation is defined as any group of two or more persons who, acting in coordination, seek to:
Jeopardize national integrity or national independence,
Prevent, alter or subvert the functioning of State institutions provided for under the Constitution,
Force public authority to practice an act, abstain from practicing it or tolerate its practice,
or yet to intimidate certain persons, groups of persons or the general population through the practice of certain crimes.
A penalty of imprisonment of 5 to 15 years is applicable.

It is defined as practicing individual acts of terrorism anyone who, acting with the above mentioned purposes, practices crimes:

- Against life, physical integrity or personal freedom;
- Against the safety of transportations and communications, including telegraphic, telephonic, radio or TV communications;
- Deliberate creation of common danger, through fire, dissemination of radioactive substances or toxic or suffocating gases, flood or avalanche, collapse of building, contamination of food and water for human consumption or diffusion of disease, plague or harmful plant or animal;
- Of sabotage;
- Which imply the usage of nuclear energy, firearms, explosive substances or devices, firebugs of any kind, trapped parcels or letters.

A penalty of 2 to 10 years of imprisonment is applicable.

It should be noted that such an **absence of definition of terrorist act seems intentional** since the joint application of PCC Articles 300, 301 and 299 (2) encompasses a number of different acts and activities, of whatever nature (even non criminal), within the limits imposed by the principles of legality and typicity and provided that such acts or activities pursue a criminal intent, inter alia terrorist purposes.

The Criminal Code penalizes, as provided for under Article 299 (2), acts that are not inherently criminal – for example, fund collection – but **are connected** with criminal acts, in particular of a terrorist nature. Thus, **acts of financing terrorism are legally repressed** both under PCC Article 300 (1) (**promotion of or support to** terrorist group, regardless of the kind of support given) and under Article 300 (5)

(**preparatory act to establish** a terrorist group). The first are punished with 1 to 5 years of imprisonment; the second with 1 to 8 years of imprisonment.

Pursuant to PCC Article 5, Portuguese criminal law shall apply to crimes committed outside national territory in the case of crimes provided for under Articles 300 (terrorist group/organisation) or 301 (terrorism).

This is an exception to the principle of territorial competence and allows that an investigation is initiated whenever there are reliable grounds to believe that a person or entity is somehow promoting the financing of terrorist groups acting exclusively abroad. Articles 300 and 301 are not subject to the restrictions on the application of Portuguese law specified in PCC Article 6.

□ Portuguese legislation currently in force is essentially aimed at combating the laundering of money **derived from illicit acts**; however, its dispositions also provide for the **combat of related phenomena, such as the financing of terrorism** – as established under Article 2 of Act 10/2002, which added Articles 8-A to 8-D to Decree Law 325/95. This Decree Law refers to Decree Law 313/93, which transposed into the Portuguese legal order EEC Directive 91/308 (prevention of the use of the financial system for the purpose of money laundering).

From the joint reading of these instruments, we conclude that the obligation to report suspicious transactions or those above certain amounts **applies to, besides financial bodies**, the following entities: casinos, real estate agencies, accountants, external auditors, security transporters, notaries, real estate and commercial registrars, as well as dealers on antiques and art, precious metals and stones, aircraft, ships and cars (Articles 4 to 8-C of Decree Law 325/95).

Failure to fulfil such an obligation, even if in a negligent manner, entails a misdemeanour; applicable fines can go up to € 500,000.

Failure to fulfil the duty of report foreseen on PCC Article 242 also entails, besides a misdemeanour, disciplinary or criminal responsibility on the part of officers, as defined in PCC Article 386, including **notaries and public legal persons** through their legal representatives.

Concerning lawyers, in accordance with the Law Society Statute combined with EC Directive 2001/97, these independent legal professionals have the duty to report any crime they become aware of, inter alia operations that they suspect are related to terrorist activities, without prejudice to professional confidentiality that must be safeguarded in relations with their clients.

Subparagraph 1 (b)

□ Portugal ratified, on 2. August 2002, the Convention for the Suppression of the Financing of Terrorism. It is presently being studied the possibility of introducing amendments into the Portuguese criminal law with the view to ensure the full compatibility of the Portuguese legal framework with the provisions of this Convention, without prejudice to what is said under subparagraph 1 (a).

In case such amendments are deemed necessary, in particular due to the requirement of typifying criminal law provisions, the Government shall, through the Ministry of Justice, submit relevant proposals to Parliament, for approval.

Subparagraphs 1 (c) and (d)

□ Applicable measures, regardless any existing list, are indicated under subparagraph 1 (a) in relation to money laundering.

However, the freezing of funds in Portugal, in situations other than those which fall under international obligations assumed by the Portuguese State, that is to say, in cases other than those concerning persons and entities identified in lists issued by bodies whose competence thereto has been recognized by Portugal (Article 8 (3) of the Portuguese Constitution) is possible **only within legal proceedings***.

Thus, **there are no administrative procedures for the freezing of funds**, even for purposes of criminal investigation and with no relation to the practice of specified crimes.

Still within crime prevention, it is possible to take measures aimed at validating suspicions of links with terrorism: in these cases, freezing can be determined after the necessary criminal proceeding is initiated and the subsequent judicial order to investigate is issued.

□ Funds derived from licit activities can pose problems, namely within financial operations, given that legislation in force does not currently impose on banks and other financial institutions the duty to report operations suspected of financing terrorism, but only the duty to report those in relation to which there is evidence that suggests a link to terrorist activities.

Portuguese law, however does not foresee special surveillance mechanisms for this purpose. In case funds belong to legal persons, inter alia of civil nature such as foundations or "charity" associations constituted in Portugal, authorities can extinguish such legal person in case the funds are used for illegal purposes (Articles 157, 182 and 192 of the Civil Code).

□ As stated above, although the procedure to waive bank and tax secrecy in relation to several crimes, inter alia of terrorism (Act 5/2001, of 31 October) has been swifted and implemented, **such procedure depends on a judicial warrant**.

Thus, currently there are no specific surveillance measures or legislation in place to ensure that funds or other economic resources collected for religious, cultural or charitable purposes are not diverted to other purposes, inter alia the financing of terrorism.

Regulation EU/2580/01 provides for the freezing of accounts and assets belonging to persons indicated in the lists issued by the European Union, that are found in banks and credit institutions operating in Portugal; regulation EU/881/02 provides for the same procedure in relation to persons/entities indicated in UN lists (Taliban, Al-Qaeda and associates).

Notwithstanding, in relation to entities that, outside the scope of common civil law, wish to be incorporated as religious legal persons, non governmental organisations or private institutions of social solidarity (IPSS), a specific legal framework applies.

Under such specific legal framework, which provides essentially for the granting of tax benefits, there are a number of obligations concerning registry and supervision, more restrictive in the case of NGOs and IPSS.

It should be underlined that a survey has been made of the 505 religious legal persons, 4055 IPSS and 93 NGOs for Development existing in Portugal, and there are no reasons to believe that, in any way, a possible deviation of funds is related to financing terrorism.

□ The General Legal Framework on Credit Institutions and Financial Societies (Decree Law 298/92) defines, in its Articles 3 and 6, respectively, the various types of credit institutions and financial societies. It provides that services of fund remittance or transfer are subject to previous authorisation issued by the Bank of Portugal – therefore, **alternative services, such as hawala or hundi, are expressly prohibited**. Portuguese authorities are not aware of the existence of these services in Portugal which leads to assuming that, in case they exist, they should be of reduced importance.

Subparagraph 2 (a)

□ It is true that the exception to the principle of territorial competence (subparagraph 1 (a)) does not seem to be wide enough to encompass transnational situations in which offended values are not of national character.

However, Portuguese criminal law is governed by, besides the principles of territorial competence, national interest and nationality, also the principles of universal application and plurality in the practice of crime. These principles can always be used to get around some difficulties of this kind, in cases of:

- criminal proceedings initiated in another State within which the freezing of assets in Portugal is required through legal processes;
- direct application of international conventions ratified by Portugal;
- transposition into the Portuguese legal order of the provisions of such conventions.

□ Besides the above mentioned measures, and at the risk of seeming redundant, reference should be made to:

- Preventive measures aimed at the banking and financial system, inter alia FATF's Special Recommendations on Terrorist Financing;

- General and specific crime prevention policy on which the Portuguese Criminal Law is based and that in itself dissuades the practice of acts considered illicit in the light of legislation currently in force;

- A special regime, foreseen in the Code of Criminal Procedure, which provides for the waiving of judicial authorisation previous to searches and personal searches, telephone tapping and detentions, in circumstances other than flagrant delict, in case there is evidence sustaining the practice of a crime of terrorism (among others);

- The Internal Security Act, which provides for the closure of, inter alia, companies and groups which dedicate themselves to highly organised crime, namely terrorism, or to the preparation, training or recruitment of persons for such purposes.

- Act 101/2001, which allows criminal investigation authorities to undertake undercover actions, provided that these are proportional to the aims of criminal investigation and the gravity of crime;

□ Although law does not define "good cause" (Decree Law 399/93), the Legal framework on Weapon Use and Carrying (Act 22/97) makes the issuing/renewal of licences concerning defence weapons conditional to the requester being above 21 years of age and fulfilling all the following requisites:

- Is in full capacity to exercise all his or her civil and political rights;

- Proves that he or she needs such licence due to professional reasons or personal defence imperatives;

- Has not been subject to security measures of judicially condemned for the practice of crimes, inter alia, of terrorism or terrorist organisation;

- Is subject to medical examination, psychological tests and skills tests and meets the requirements set therein.

Licences shall immediately expire in case the weapon is used for a different purpose than that it is aimed at.

Those who possess a defence or hunting weapon without the necessary licence, or transmit such weapon to someone who does not have a licence thereto, shall be punished with imprisonment of up to 2 years or fine of up to 240 days.

Subparagraph 2 (b)

- The Security Coordination Office (dependant upon the Ministry for Internal Affairs by delegation of the Prime Minister) ensures the operational coordination of Security Forces and Services (FSS). Such coordination focuses on large-scale operations, such as Euro 2004, and weekly exchanges of crime statistics.

After September 11, a task force was created within this system to elaborate a weekly document on the Evaluation of Terrorist Threats in national territory.

- Concerning general information (prevention), the coordination is incumbent upon the Ministry for Internal Affairs' Consultative Council, in which all security forces and services sit to provide advice on internal security matters.

- The exchange of operational information, on a case-by-case basis, does not go through the Security Coordination Office (enlarged forum of operational coordination), but is rather processed on a bilateral level, in accordance with the principles of "need to know", secrecy of criminal investigation and data protection of the concerned persons.

Thus, the repression of terrorism financing is made between the Judiciary Police (PJ) and the national financial system (banks and insurance companies) – Ministry of Finance, Bank of Portugal and Portuguese Insurance Institute. At this operational level, information necessary for purposes of criminal investigation is exchanged in direct bilateral contacts between judicial authorities (Public Prosecution/Judiciary Police) and banks (Act 5/2002).

There is always a special duty of collaboration among security forces and services in what concerns the exchange of information on matters related to the protection and safeguard of internal safety, as well as repression of terrorism.

Therefore, each entity has the duty to communicate to the legally competent body in a given case, all facts or information of mutual interest or those that concern the recipient solely: the Security Information Service (SIS) cooperates with the security forces and services (FSS), the Judiciary Police with other FSS and public bodies with competence on matters related to internal safety.

Finally, it should be noted that the Civil Protection System – which acts in coordination with the Emergency Civil Planning System (Prime Minister/Ministry of Defence)- works in parallel with the Internal Security System (see Framework Law on Civil Protection, Annex III, article 14). Armed forces, security forces and services and fire brigades, among others, are civil protection agents.

Subparagraph 2 (c) * http://www.gddc.pt/cooperacao/materia-penal/mpenal-ce.html

MUTUAL LEGAL ASSISTANCE ON CRIMINAL MATTERS

- **Multilateral agreements:**

- European Convention on mutual assistance in criminal matters and its Additional Protocol, Council of Europe (ratified in 1994) and Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
  European Convention on Extradition (ETS no. 24) (open for signature on 13.12.1957; entry into force: 18.04.1960)

- Additional Protocol to the European Convention on Extradition (ETS no. 086) (open for signature on 15.10.1975; entry into force: 20.08.1979)
- Second Additional Protocol to the European Convention on Extradition (ETS no. 098) (open for signature on 17.03.1978; entry into force: 05.06.1983)
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS no. 051) (open for signature on 30.11.1964; entry into force: 22.08.1975)
- European Convention on the control of the acquisition and possession of firearms by individuals (ETS no. 101) (open for signature on 28.06.1978; entry into force: 01.07.1982)
  Objects comprised in Annex I, paragraphs 1 items (j) to (n), 2 and 3
- Convention on the Transfer of Sentenced Persons (ETS no. 112) (open for signature on 21.03.1983; entry into force: 01.07.1985)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS no. 141) (open for signature on 08.11.1990; entry into force: 01.09.1993)

- **Bilateral agreements:**

SPAIN

- Agreement on transborder persecution, celebrated with Spain in 1998;
- Agreement on the Repression of Illicit Drug Trafficking by Sea, celebrated with Spain in 1998
- Agreement on Legal Assistance on Civil and Criminal Matters, celebrated with Spain in 1997
- Agreement on the Creation of Mixed Frontier Posts, signed on 19.11.1997
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 15.02.1993
- Protocol Agreement on Police Cooperation, signed on 09.03.1992
- Agreement on Cooperation in Combating Drug Trafficking, celebrated with Spain in 1987

FRANCE

- Agreement on the Re-admittance of Persons in an Irregular Situation, celebrated with France and signed on 08.03.1993

THE NETHERLANDS

- Agreement Relating to the Privileges and Immunities Necessary to Perform Official Duties of Europol Liaison Officers

SWITZERLAND

- Agreement relating to Mutual Treatment in the field of Residence Permits, signed on 12.04.1990

BULGARIA

- Agreement on the Re-admittance of Persons in an Irregular Situation, celebrated with Bulgaria and signed on 20.10.1997

HUNGARY
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 28.01.2000

LITHUANIA
- Agreement on the Re-admittance of Persons in an Irregular Situation, signed on 11.02.1999

RUSSIAN FEDERATION
- Cooperation Agreement on Crime Combat, celebrated with the Russian Federation in 2001

ANGOLA
Cooperation Agreement on the Combat to Illicit Trafficking in Drugs and Psychotropic Substances, and Related Crime, celebrated with Angola in 1995
- Cooperation Agreement on Legal and Judicial Matters, signed on 30.08.1995

BOTSWANA
- Agreement on Extradition, signed on 06.02.1970

CAPE VERDE
- Technical Cooperation Agreement on Police Matters, signed on 13.06.1988

GUINEA-BISSAU
- Agreement on Legal Cooperation, signed on 05.07.1988
- Additional Protocol to the Agreement on Legal Cooperation, signed on 05.03.1989

MOZAMBIQUE
- Cooperation Agreement on the Combat to Illicit Trafficking in Drugs and Psychotropic Substances, and Related Crime, celebrated with Mozambique in 1995
- Cooperation Agreement on Legal and Judicial Matters, signed on 12.04.1990
- Additional Protocol to the Cooperation Agreement on Legal and Judicial Matters, signed on 26.06.1990

SAO TOME AND PRINCIPE
- Agreement on Judicial Matters, signed on 23.03.1976
- Additional Protocol to the Agreement on Judicial Matters, signed on 18.07.1997
- Cooperation Protocol relating to the Establishment of a Training and Investigation Centre on Legal and Judiciary Matters, signed on 11.09.1992

MOROCCO

- Convention on Legal Cooperation in Criminal Matters, celebrated with Morocco in 1998

Convention on the Assistance to Detainees and Transfer of Sentenced Persons, celebrated with Morocco on 1998

Cooperation Agreement on the Fight against Terrorism and Organised Crime, signed on 28.04.1992

TUNISIA

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Tunisia in 1998

ARGENTINA

- Convention for the Prevention of Undue Use of, and Repression of Illicit Trafficking in Drugs and Psychotropic Substances, celebrated with Argentina in 1997

BRAZIL

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Brazil in 1991

Cooperation Agreement to Reduce Demand, Combat Production and Repress Illicit Trafficking in Drugs and Psychotropic Substances, celebrated with Brazil in 1991

Treaty on Mutual Cooperation in Criminal Matters, signed on 07.05.1991

Treaty on Extradition, signed on 07.05.1991

Cooperation Agreement to Reduce Demand, Combat Production and Repress Illicit Trafficking in Drugs and Psychotropic Substances, signed on 07.05.1991

Friendship, Cooperation and Consultation Treaty, signed on 22.04.2000

CANADA

- Treaty on Mutual Assistance in Criminal Matters, celebrated with Canada in 1997

CUBA

- Agreement on Cooperation in Preventing the Undue Use of, and Repressing Illicit Trafficking in, Drugs and Psychotropic Substances, celebrated with Cuba in 1998

MEXICO

- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Mexico in 1998

URUGUAY

- Convention on Preventing the Undue Use of, and Repressing Illicit Trafficking in, Drugs and Psychotropic Substances and their Precursors and Essential Chemical Products, celebrated with Uruguay in 1998

VENEZUELA

- Agreement on Prevention, Control, Monitoring and Repression the Undue Use of, and Illicit Trafficking in, Drugs and Psychotropic Substances, celebrated with Venezuela in 1994

AUSTRALIA
- Treaty on Mutual Legal Cooperation in Criminal Matters, celebrated with Australia in 1989

MACAO
- Agreement on the Transfer of Sentenced Persons, signed on 07.12.1999

THAILAND
- Treaty of Cooperation in the Execution of Criminal Sentences, signed on 01.04.1985

EXTRADITION

- **Multilateral framework:**

- European Convention on Extradition and its two Additional Protocols (Council of Europe);
- Convention Relating to Extradition between Member States of the European Union;
- Convention on simplified extradition procedures between the Member States of the European Union

- **Bilateral framework:**

BOTSWANA
- Agreement on Extradition, celebrated with Botswana, 1970

CAPE VERDE
- Judiciary Agreement and its two Protocols, celebrated with Cape Verde, in 1976 and 1982

TUNISIA
- Treaty on Extradition, celebrated with Tunisia in 1998

Argentina
- Convention for the Mutual Extradition of Criminals, celebrated with Argentina in 1998

Bolivia
- Treaty on Trade, Navigation and Extradition, celebrated with Bolivia in 1879

Brazil
- Treaty on Extradition, celebrated with Brazil in 1991

USA

- Convention on Extradition, celebrated with the United States of America in 1908

Mexico
Treaty on Extradition, celebrated with Mexico in 1998

Australia
Treaty on Extradition, celebrated with Australia in 1989

Subparagraph 2 (d)

No specific amendments were introduced into Portuguese legislation concerning the fight against terrorism, because the Portuguese legal framework (as described in subparagraph 2 (a)) allows the intervention of authorities even in those situations when terrorist threats are to be effected outside Portugal. The only change introduced after the 11. September was provided for under Act 10/2002, which improves mechanisms related to the fight against money laundering and, extensively, financing. Thus, new cooperation bonds were established and the previously existing ones between Portuguese authorities and similar foreign authorities reinforced. The Portuguese presence in multilateral bodies concerned with combating crime was also reinforced. It should be noted, in this regard, the work developed by Portugal within the Europol task force.

Subparagraph 2 (f)

□ International legal cooperation on criminal matters is regulated, in Portugal, in accordance with Acts 144/99 and 104/2001, which apply on a subsidiary basis in the absence of an international instrument binding upon the Portuguese State.

Law does not establish any deadline to reply to legal assistance requests submitted by other countries. Their fulfilment depends, among other aspects, on the steps to be taken, necessary human or technical resources and degree of complexity of investigations to undertake. Without prejudice to the above, one can say that, in average, such requests can be fulfilled within 30 days.

The principle of reciprocity is inscribed in Article 4 of Act 144/99, updated by Act 104/2001. It provides that the Ministry of Justice shall request a guarantee of reciprocity, if applicable, and can grant it to other States. The lack of reciprocity, however, does not prevent the fulfilment of a request for cooperation, proving that is advisable in view of the nature of the fact or the need to fight against certain forms of crime, including terrorism.

Subparagraph 2 g)
See reply to subparagraph 2 (b)

Subparagraph 3 (c)

□ The celebration of specific bilateral agreements on the prevention and repression of terrorism has not been the usual practice of Portugal. We shall note solely the Agreement on Cooperation on the Fight against Terrorism and Organised Crime, celebrated with Morocco in 1992.

However, bilateral agreements concluded with other States concerning legal cooperation in criminal matters also include provisions on the prevention, detection and repression of terrorism and terrorist groups/organisations, as happens, inter alia, in the Cooperation Agreement on Crime Combat, celebrated with Russia in 2000 (in this regard, see reply to subparagraph 2 (c), which includes the list of bilateral agreements and treaties celebrated by Portugal on extradition and mutual legal assistance).
[At the European Union level, and within the framework of its Plan of Action in this field, reference should be made to the recent decision to introduce into all cooperation/association agreements celebrated with third States, a clause on terrorism].

Subparagraph 3 (d)

- Portugal ratified all 12 UN Conventions relating to terrorism.

- As stated above, whenever necessary, Portugal enacts the legislation required to implement in its internal legal framework the provisions of international legal instruments Portugal is a party to. Possible amendments to the Criminal Code are presently under consideration, in view of the forthcoming entry into force of the United Nations Convention for the Suppression of the Financing of Terrorism, ratified by Portugal on 2 August 2002.

Subparagraph 3 (e)
As mentioned above in reply to subparagraph 2 (e), Act 144/99 shall apply on a subsidiary basis in the absence of international legal instruments on the matter binding upon the Portuguese State. Pursuant to Article 31, extradition can take place for purposes of criminal prosecution or enforcement of a penalty or security measure involving deprivation of liberty for a crime that courts of the requesting State are competent to try. For any of these purposes, the surrender of the requested person is only admitted in respect of offences, including attempted offences, that are punishable under both the Portuguese law and the law of the requesting State by a sanction or measure involving deprivation of liberty for a maximum period of at least one year.

Thus, such provision encompasses crimes of terrorist organisation or terrorism, foreseen under Articles 300 and 301 of the Criminal Code, in view of the penalties applicable in abstract to authors of such crimes.

Subparagraph 4
- Since 11 September 2001, many of the concerns expressed in paragraph 4 of Security Council resolution 1373/02 have been addressed in various statements and declarations made by Portugal in several occasions, inter alia within the Portuguese Presidency of OSCE and the Iber-American Summit.